

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

WAYNE CORK and JANET CORK,        )  
    )  
    )  
Plaintiffs,        )  
    )  
    )  
vs.                                    )        Case No. 09-CV-05032-WAK  
    )  
    )  
ALLIED INTERSTATE, INC.        )  
    )  
    )  
Defendant.        )

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO  
ENFORCE SETTLEMENT**

COMES NOW, Defendant, ALLIED INTERSTATE (“Defendant”), by and through its attorney of record, for its Response to Plaintiff’s Motion to Enforce Settlement, and states as follows:

1.        On September 1, 2009, Plaintiffs filed their Motion to Enforce Settlement with this Court.
2.        On September 3, 2009, Defendant filed its Motion to Stay Deadlines with this Court.
3.        On September 9, 2009, Plaintiffs’ counsel confirmed receipt of the settlement funds via email.
4.        On September 15, 2009, this Court scheduled and sent a Notice of Telephonic Conference, regarding the two motions referenced herein, and setting such phone conference for September 21, 2009, at 10:15 am.
5.        Plaintiffs’ Motion to Enforce Settlement is now moot as all terms of the settlement have been met by Defendant.
6.        Plaintiffs’ request for attorney’s fees for filing this Motion should be denied. The

settlement check was mailed to Plaintiffs' counsel prior to the filing of Plaintiffs' Motion to Enforce. Plaintiff's acknowledged receipt of payment eight (8) days after the motion was filed. The timing of the payment was not included as a specific term of the settlement agreement. Plaintiffs have acknowledged receipt of the "full" payment of the settlement and should not be unjustly enriched by this unnecessary motion.

WHEREFORE, Defendant Allied Interstate, Inc., requests that this Court enter an Order denying Plaintiffs' Motion to Enforce Settlement as moot, deny Counsel for Plaintiffs' requests for additional attorney's fees, and such other orders as this Court deems just and appropriate.

Respectfully submitted,

DATED: September 16, 2009

BERMAN & RABIN, P.A.

/s/ Rachel Ommerman

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ATTORNEYS FOR DEFENDANT

Certificate of Service

I hereby certify that on this 16th day of September, 2009, a true and correct copy of the above and foregoing was sent via the federal electronic filing system and by U.S. mail, postage paid:

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**Attorney for Plaintiff**

/s/ Rachel Ommerman

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Attorney for Defendant